
RECOMMENDATIONS FOR ALL BOARDS UNDER THE DEPARTMENT (“CROSSCUTTING RECOMMENDATIONS”)

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The DCA has identified several “cross-cutting” issues affecting all boards and the Department’s consumer protection mission, including:

- Open Committee Meetings
- Meaningful Strategic Planning
- Increased Fine Amounts for Citations
- Discharge of Cost Recovery Orders

ISSUE #1. (BOARD MEETINGS OPEN TO THE PUBLIC?) Should the Bagley-Keene Open Meetings Act be amended to require that all DCA board meetings be noticed and open to the public?

Recommendation #1: *The Joint Committee and the Department recommend that the Bagley-Keene Open Meetings Act be amended to require that all DCA board committee meetings be noticed and open to the public.*

Comments: Committees are often convened by boards to consider particular issues in depth and committee recommendations are reported back to the full board. While this is an efficient method of addressing issues that are before the board, these meetings are often held outside of public view. Under the Bagley-Keene Open Meetings Act, meetings must only be publicly noticed if three board members or more are participating. As a result, some boards appoint only two members to serve on committees to avoid triggering the public notice requirement. This prevents the public from participating in or observing committee deliberations and decision making.

ISSUE #2. (UPDATE STRATEGIC PLAN ANNUALLY?) Should all boards update their strategic plan annually with board member participation?

Recommendation #2: *In order to maximize the strategic planning process, the Joint Committee and the Department recommend that boards update their strategic plan annually and require board member participation.*

Comments: It has come to the Department’s attention that some boards do not update their strategic plans on an annual basis in a meaningful way and in some instances, board members do not participate in the strategic planning process, relying on staff to provide them with a plan. It is a primary duty of

the board to set policy priorities and to direct staff – not the other way around. The purpose of strategic planning is for board staff, working collaboratively with board members to identify priorities and specific plans for the coming year. DCA believes its boards would be more successful if they engaged energetically in strategic planning.

ISSUE #3. (INCREASE CITE AND FINE LIMIT?) Should the cite and fine limit be increased to \$5000?

Recommendation #3: *The Joint Committee and the Department recommend that the citation and fine limit in Business and Professions Code Section 125.9 be increased to \$5000.*

Comments: The current cap for citations and fines issues by the Department’s regulatory programs is \$2,500. This cap has not been increased for over fifteen years. As a result, many licensees perceive fines as a cost of doing business rather than a penalty or deterrent, as they are intended to be.

ISSUE #4. (COST RECOVERY DISCHARGED IN BANKRUPTCY PROCEEDINGS?) Should steps be taken to prevent cost recovery from being discharged in bankruptcy proceedings?

Recommendation #4: *The Joint Committee and the Department believe that cost recovery orders should not be discharged in bankruptcy proceedings. Further, the Joint Committee and the Department recognize the need for clarification to prevent cost recovery from being discharged in bankruptcy proceedings.*

Comments: Cost recovery orders should not be discharged in a personal bankruptcy. The Department of Justice has successfully argued that “costs” are an element of the discipline sanction imposed on a licensee, so cost recovery orders are therefore considered to be penalties, not reimbursements. Clarification is needed to avoid the time and expense of repeatedly arguing this matter in federal bankruptcy courts.